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Child and Family Services Review Board



Province of Ontario



Annual Report
1993-1994

Child and Family Services Review Board

Annual Report 1993-1994

This is a publication of the
Child and Family Services Review Board
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Année internationale de la famille

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International Year of the Family 1994
Année internationale de la famille

Child and Family
Services
Review Board

Commission de révision
des services à
l'enfance et à la famille

June 1994

The Honourable Tony Silipo
Minister of Community and
Social Services

Dear Minister Silipo:

The third Annual Report of the Child and family Services Review Board is submitted to you on behalf of my colleagues on the Board. We are pleased to share with you information about our activities during the 1993-1994 fiscal year and particularly draw to your attention our observations and concerns about systemic issues identified during the course of our work.

Sincerely,

Herbert A. Sohn
Chair, Child and Family Services Review Board



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Foreword by the Chairperson

The members of the Child and Family Services Review Board are pleased to be able to serve the people of Ontario. The Board has experienced heightened activity during the 1993-1994 fiscal year, reflected in an increase of some 73 percent in applications for review over the previous year.

The Board is grateful to the Minister of Community and Social Services for responding to the increase in the Board's workload by undertaking to have the number of Board members increased to 18, the maximum permitted by law.

The Board has continued its practice of including a section for Observations and Concerns in its written reasons for decision in the cases which it hears. The purpose for such a section is to enable the Board to record matters, introduced into evidence, that may reflect serious systemic deficiencies. These administrative and/or treatment deficiencies may not be subject to the decision-making authority of the Board, but are submitted for consideration by the Ministry and other relevant organizations that may not otherwise be aware of those matters and might use such observations to improve service to individuals and to the community.

Similarly, the Board, through the Observations and Concerns section of its Annual Report seeks to bring to the Minister's attention matters brought before it.

The following is a summary of those issues reflected in the Board's experience, along with related recommendations. More detail can be found in the Observations and Concerns section of this report.

- **Children unaware of their right to a review**

Most children in residential placements in Ontario are not aware of their right to review of their placement in residences. Independent, supportive individuals should explain to children placed in residences their right to an independent review of their placement by the Child and Family Services Review Board.

- **Insufficient appropriate alternatives for children**

Many children remain in inappropriate residential placement and treatment programs because of a lack of alternatives.

- **Environmental factors are not addressed**

Too often, after treatment, children are returned to settings which may have caused or exacerbated their mental health problems.

The Ministry should assess the rationality of the services provided to children and their families.

- **Treatment should fit the child**

Children are often moved from one facility or program to another in response to new diagnoses.

A continuum-of-care model should be considered for children.

- **Liberty of the child should be protected**

Children often are held in a secure treatment program for several days before they have a hearing which the law provides for them.

Initial decisions of admission of a child to a secure treatment program are made by a psychiatrist employed by the profit-making facility to which the child is admitted.

The experience of other jurisdictions should be studied to identify a more objective means of determining when a child should be placed in a locked facility to receive treatment for a mental health problem.

- **Objective assessment of treatment needed**

Children often are placed in a locked facility on an emergency basis to receive treatment for mental health problems. In essence, we deprive children of their liberty at great expense to the public.

Objective impact studies should be conducted to determine if such treatment achieves its desired aims and to provide more sophisticated knowledge about how it can be used.

- **Licensees often are unaware of their rights**

Many licensees are unaware of their right to a review by the Child and Family Services Review Board of terms and conditions imposed on their licences.

Applicants for licences to operate programs under the purview of the Ministry of Community and Social Services and licensees should be advised routinely of their rights to reviews by the Child and Family Services Review Board.

Herbert A. Sohn
June 1994

The Board

The Child and Family Services Review Board (Board) is an administrative tribunal composed of up to 18 members appointed by the Lieutenant Governor in Council. The Lieutenant Governor also appoints the chairperson, and vice-chairpersons designated by the chairperson. The Board retains independent counsel for legal advice.

The chairperson appoints members of the Board to conduct reviews and one to chair each review.

An executive committee, comprising the chair, vice-chair and two other experienced members, develops policy and procedural proposals and ensures that the administration of the Board is conducted according to legislated requirements and procedural policy.

History of the Board

The Child and Family Services Review Board was so named in *An Act to Amend the Child and Family Services Act*, 1984 (s.10), which was proclaimed on July 6, 1987.

Prior to the creation of the Board, the Children's Services Review Board had been established under the *Children's Residential Services Act*, R.S.O. 1980 (repealed) and was continued under the *Child and Family Services Act* (CFSA) (s.190) when that Act was proclaimed on November 1, 1985.

Two earlier Boards, the Day Nursery Review Board and the Licensing Board of Review, established under the *Children's Mental Health Centres Act* (repealed), had been replaced by the Children's Services Review Board.

The establishing section under the CFSA, R.S.O. 1990 is Section 207.

Members of the Board

Neville Chenoy

Mr. Chenoy was appointed to the Board in November 1991. He is a health care planning consultant, with 16 years experience in coordination of health services and strategic planning. He holds two masters degrees, one in Pharmacy from the University of London (U.K.) and one in Health Administration from the University of Ottawa.

Gail Christy

The Reverend Gail Christy was appointed to the Board in December 1992. She has been a counsellor for the last 26 years, working primarily at a community college in Ottawa. She also trained as a speech pathologist. Approximately 14 years ago she returned to Queen's University for theology training and was ordained in 1983 to the ministry in the United Church of Canada. She served churches in Saskatchewan for over seven years and returned to Ontario three years ago. She now works in both counselling and ministry.

Michele Chretien Guidolin

Ms. Guidolin was appointed to the Board in December 1992. She is a teacher with 29 years experience in the elementary school system and provides guidance and counselling at the intermediate level. She has a B.A. degree from Laurentian University, with a major in Francais and a B.Ed. from the University of Ottawa.

Ms. Guidolin is a member of the Board of Governors for the Association des enseignantes et des enseignants franco-ontariens (AEFO), president of the provincial level on the Status of Women Committee, and represents the Feminine Condition

at the Ontario Teachers Federation. She is fluent in the French and English languages and also understands and speaks Italian.

Anne Hill

Ms. Hill was appointed to the Board in January 1993. She has many years of experience as a faculty member in the Human Services Division at Fanshawe College. Her professional and community service experience has focused on enhancing the quality of life of people who have developmental and physical disabilities. She has an M.A. degree in psychology from the University of Western Ontario.

Margaret Kidd

Ms. Kidd was appointed to the Board in May 1989. She has an M.A. degree in sociology from the University of Toronto and has extensive experience in early childhood education and child development in Canada as well as in third world countries. She taught courses in early childhood education for 12 years at several Ontario colleges.

Lois Mahon

Ms. Mahon was appointed to the Board in January 1994. She has worked in human services for the past 22 years, both as an employee and as a volunteer. During this time she has been committed to the development and delivery of quality child care services and services for children and adults who are physically and/or developmentally challenged. Currently, she is the Executive Director of Child Care Resources, Sudbury/Manitoulin, and is actively involved with Big Sisters in Sudbury.

Christine E. Milne

Ms. Milne was appointed to the Board in October 1991. She received a B.A. degree from York University, with a major in Psychology and an L.L.B. degree from Osgoode Hall Law School. she was counsel for the Children's Aid Society of Metropolitan Toronto for eight years. Currently, she is in private practice in Toronto.

Griffith Morgan

Dr. Morgan served on the Board from October 1991 to October 1993. He has an M.A. degree in English Literature from Cambridge and a Ph.D. degree in Psychology from the University of London (U.K.). He has over 40 years experience as a teacher and psychologist.

Wilhelmina Nolan

Ms. Nolan was appointed to the Board in January 1994. She has extensive grassroots and front line experience addressing disabled persons', womens', children's and youth issues. Ms. Nolan served as founding president of Projet Espérance/Project Hope Non-Profit Corporation, having conceived, developed and implemented a model supportive residential community for women and children. She is a member of the Board of Directors of the Social Planning Council of Metropolitan Toronto, and is President and C.E.O. of her own environmental marketing company, Bio Business International Inc. Her formal education has been in social sciences, primarily at Ryerson University in Toronto,

Gary O'Connor

Mr. O'Connor was appointed to the Board in April 1990. He has extensive experience as a teacher in the secondary school system and at Laurentian University and is currently the coordinator of

alternative education programs at a secondary school in Sturgeon Falls. He is fluent in the French and English languages.

Prabha Sharma-Sajan

Ms. Sharma-Sajan was appointed to the Board in January 1993. She received a B.A. degree from York University, with a major in Sociology. She also earned a T.E.S.L. certificate from the University of Toronto. She has several years experience working in the social services field, primarily with immigrant families. She is a special education teacher, working with children and youth who have learning and behavioural problems.

Kathryn G. Sutherland

Ms. Sutherland was appointed to the Board in December 1992. She has a Bachelor of Applied Science degree in Civil Engineering from the University of Ottawa and is a full member of the Association of Professional Engineers of Ontario. She is fluent in the French and English languages.

Herbert A. Sohn

Dr. Sohn, Board chair, was appointed to the Board in October 1991. He earned a Ph.D. degree in Social Work from the University of Toronto and has extensive experience in the fields of human rights and social services, primarily in child protection. He has taught social work at several universities in Ontario and Alberta. He was the Assistant Director of Ontario's Human Rights Commission, headed Ontario's Child Abuse and Family Violence Prevention Programs and was the founding Children's Guardian for the Province of Alberta.

Gerald Steinman

Mr. Steinman, Board vice-chair, was appointed to the Board in May 1989. He has an M.Ed. degree from the University of Toronto and has extensive experience as an educator and principal in the elementary school system. He has served as a member of advisory bodies to regional and provincial governments and private agencies in the area of social resources for family and children's services. He is a trustee for the North Waterloo Children's Centre Board of Education.

Marie Tincombe Shaw

Ms. Tincombe Shaw served on the Board from April 1990 to December 1993. She has a bachelor degree in Social Work from Laurentian University and currently is chair of the Academic Support Programs Division at Cambrian College, where she is a teaching master in the school's social service program. She has extensive experience in child welfare and protection services as well as family support services.

Joanne Zeppa

Ms. Zeppa was appointed to the Board in December 1992. She has over 20 years of teaching experience at both the secondary and elementary levels and has served as a director on the Algoma District Children's Aid Society Board as well as chair of the Algoma Community Legal Clinic Board of Directors. She is vice-chair of the Plummer Memorial Public Hospital Board of Directors in Sault Ste. Marie.

Duties of the Board

The Board is required by law to conduct reviews under the CFSA and the *Day Nurseries Act* (DNA), upon receipt of applications to do so, regarding the following matters:

- residential placement of a child (s.36 CFSA)
- admission of a child to emergency secure treatment (s.124 CFSA)
- refusal by a director to approve a proposed adoption placement (s.142[3] CFSA)
- the imposition by a director of a term or condition on the approval of a proposed adoption placement (s.142[6] CFSA)
- refusal of the disclosure of information relative to an adoption (s.172 CFSA)
- refusal by a director of a licence or renewal of a licence to operate a children's residence, the provision of residential care, to place children for adoption (s.197 CFSA), to operate a day care centre or a private home day care service (s.13 DNA)
- revocation of a licence by a director (s.197 CFSA or s.13 DNA)
- imposition by a director of a term or condition on a licence (s.198 CFSA or s.14 DNA)

In addition to the matters noted above, Part VIII of the CFSA would require the Board, once that Part is proclaimed, to conduct reviews of applications regarding the following matters:

- refusal of a request for access to a record (s.188 CFSA)

- refusal of a request for correction of a record (s.188 CFSA)

The Board is required to make orders on the matters that it reviews and is dependent upon the parties at hearings to present all relevant evidence, because the Board must make its determinations and issue its orders based upon the evidence. The Board does not conduct independent investigations. It must rely on the capabilities and thoroughness of those who submit evidence.

Some details regarding each area of responsibility are noted below.

Residential placements

A Residential Placement Advisory Committee (RPAC) is required by law to review residential placements of children within its jurisdiction. The RPAC, in addition, must advise the child immediately following such a review, of the child's rights to apply to the Board for a further review of the matter.

A child 12 years of age or older, who is in a residential placement to which he or she objects, may apply to the Board to determine the child's placement. Also, such a child may apply to the Board for a review, if the recommendation of the RPAC is not being followed.

Orders of the Board

The Orders of the Board, following such reviews, are final. The Board can order transfer of the child to another residential placement, order that the child be discharged, or confirm the existing placement. The Board also may add terms and conditions to its orders.

Emergency secure treatment

The CFSA provides that a child with a mental disorder who, as a result of such disorder, has caused or threatens to cause serious bodily harm to self or others, may be admitted to a secure treatment facility on an emergency basis. Such a child, or any other person, has a right to apply to the Board for an order releasing the child from the secure treatment program and the child must be advised of that right.

The administrator of the secure treatment program is required to notify the Office of Child and Family Service Advocacy and the Official Guardian of the child's admission to the program. The Advocacy Office, in turn, is required to ensure that an independent individual explains the right to a review to the child.

If the child decides to apply for a review, the Official Guardian must ensure that the child has legal counsel.

Six secure treatment programs in the province have been approved, pursuant to the *Child and Family Services Act*, by the Minister of Community and Social Services; however, during the 1993/94 fiscal year, applications for review of admission have been received only from one of these six programs, Youthdale Psychiatric Crisis Centre, Toronto.

The five secure treatment programs from which no applications have been received are listed below:

- Roberts/Smart Centre, Secure Treatment Program, Ottawa
- Thistletown Regional Centre for Children and Adolescents, Rexdale
- George Hull Centre for Children and Families, Etobicoke
- Beech Grove Children's Centre, Kingston

- Secure Treatment Program, Syl Apps Campus, Oakville

Orders of the Board

Any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program. The decisions of the Board in such cases are final.

Adoption placement

Placement of a child for adoption in Ontario is the legal preserve of the Children's Aid Society or the holder of a licence to place children for adoption.

Licensees, except those exempted from doing so, must first notify a director appointed by the Minister of Community and Social Services. At the time that a licensee notifies a director of a proposed placement, that licensee must also provide the director with a report of an adoption home-study of the person with whom placement is proposed.

The director who receives a report and proposal for placement, may refuse to approve the placement, but must so notify the licensee and the person with whom placement is proposed. The licensee and the person with whom placement is proposed are referred to hereinafter as "the applicants."

A director may set any terms and conditions on a placement for adoption which the director considers appropriate.

In cases where a director refuses placement of a child for adoption or sets terms and conditions for placement, the applicants are entitled to a hearing before the Board.

The director must notify the applicants of the proposal to refuse placement, together with written reasons. That notice must inform the applicants of

their right to a hearing by the Board and of procedures for requesting such a hearing.

The Board must appoint a time for, and hold, a hearing, if it is notified within the prescribed time by an applicant of the desire for a hearing. The evidence taken at the hearing must be recorded.

Orders of the Board

The Board may order the director to take any action it considers appropriate. Also, the Board may confirm, strike out, and/or impose any terms and conditions it considers appropriate.

Adoption information

Information regarding an adoption may be disclosed to certain individuals under prescribed circumstances. A person who has been refused disclosure of information that relates to an adoption, may apply to the Board for a review of the matter. The review must be conducted by way of a hearing, unless the parties to a review agree otherwise.

Orders of the Board

Following its review, the Board may make an order requiring the disclosure of all or part of the information to the person or, conversely, make an order confirming the refusal.

Licences under (CFSA) and (DNA)

Licences are required in Ontario for the following:

- the establishment, operation or maintenance of a children's residence
- the provision of residential care for three or more children

- the placement of a child for adoption
- to establish, operate or maintain a day nursery or a private home day care agency.

A director must inform an applicant for any such licence, of a proposal to refuse a licence, and must inform a licensee of a proposal to refuse to renew or of a proposal to revoke a licence. A director may suspend a licence provisionally where the director perceives an immediate threat to the health, safety or welfare of a child. The director must inform such applicant or licensee of that person's entitlement to a hearing by the Board.

A director is not required by law to inform an applicant or licensee of that person's right to a hearing by the Board with regard to the imposition by the director of terms and conditions on a licence. Nevertheless, such a person does have a right to apply to the Board for a hearing to review terms and conditions imposed on a licence by a director, under the CFSA or the DNA.

Orders of the Board

Following its hearing on refusal or revocation of a licence, the Board may order the director to take such action as the Board considers appropriate. The Board may confirm or strike out any or all of the terms and conditions, or impose such other terms and conditions that it considers appropriate.

Duty to report abuse and need of protection

Members of the Board and Board staff are required by the CFSA, as are others, to report to a Children's Aid Society a suspicion that a child may be the victim of abuse or a belief that a child may be in need of protection.

Activities of the Board

Administrative highlights

A) *Procedural guidelines for hearings*

1. Licensing

The Board has two sets of procedural guidelines for hearings, one relevant to placement of children in residences and the other to the release of children from secure treatment programs. Both sets of guidelines have been revised and updated in consultation with interested groups.

In the 1993/94 fiscal year, the Board launched a project to develop procedural guidelines for hearings pertaining to applications about day care, residential and adoption licences. To assist in this effort, the Board has sought input from a number of sources. Those who have been invited to assist in the process and to comment on the draft guidelines include the Legal Services Branch of the Ministry of Community and Social Services, staff in seven of the Ministry's area offices who relate to licensed agencies, as well as child care, children's services and adoption services specialists of the Ministry; umbrella associations of licensed agencies, including those providing day care, adoption placement, and residential services in Ontario.

A representative sampling of day care centres also agreed to review and comment on the draft. To date, written responses have been received from over 20 agencies. The Board plans to have the final version of the guidelines completed early in the 1994/95 fiscal year.

2. Secure treatment

The Board, in 1993-94, initiated a review of its procedures for hearings regarding emergency secure treatment admissions and has invited relevant organizations to participate in a consultation process before finalizing revisions to the guidelines. The organizations invited to participate in this process are: the Office of the Official Guardian, which appoints legal counsel to represent children at hearings pertaining to emergency secure treatment; Youthdale Treatment Centre of Toronto, whose director has been a party to such hearings; the Office of Child and Family Service Advocacy of the Ministry of Community and Social Services; and the manager of the Children's and Youth Services Unit of the Toronto Area Office, Ministry of Community and Social Services. The Children's Services and Legal Services Branches of the Ministry of Community and Social Services will be consulted, as well, prior to finalization of the procedural guidelines.

B) *Code of behaviour*

The Board is governed in its practices and behaviour by relevant legislation, including the *Child and Family Services Act*, the *Day Nurseries Act* and the *Statutory Powers Procedure Act*. However, this fiscal year the Board has initiated the development of a code of behaviour for its members to govern their day-to-day conduct in their official functions. The code will be completed early in the 1994-95 fiscal year.

C) Residential placement advisory committees

The Board, throughout the 1993-94 year, has continued and broadened its contact with residential placement advisory committees regarding the welfare of children. These committees are required by law to advise the child in residential placement, whose placement a Committee has reviewed, of the child's right to apply to this Board for review.

The Board's chairperson addressed representatives of the province's Residential Placement Advisory Committees at their Toronto meeting in April 1993.

The Board continues to be concerned that many, perhaps the majority, of the children in residence in Ontario, are not contacted by Residential Placement Advisory Committees and, perhaps not coincidentally, very few applications have been received from such children.

D) Orientation and training of board members

The appointment of two new members to the Board in January 1994 maintained the number of Board members at 14. The new members participated in an orientation.

As in the previous year, Board members were encouraged to attend a two-day conference of Ontario boards and agencies held in November 1993. Workshops and plenary sessions of that conference dealt with a number of issues important to the operation of administrative tribunals. In addition, Board members attended workshops provided by the Society of Ontario Adjudicators and Regulators (SOAR) on such topics as the conduct of hearings and preparation of written decisions. Training components have been included in Board full-day meetings, which have been held approximately every second month. These training components have consisted of presentations from knowledgeable

people from the fields of child welfare, child psychiatry, and the law. One Board meeting took place on the Syl Apps Campus of the Thistletown Regional Centre. The Board members were taken on a tour of the facility and met with senior professional staff to discuss the Centre's program and secure treatment issues, including the weighing of evidence in secure treatment matters.

E) Reduction of costs

The Board continued to make adjustments in its operations aimed at conserving funds. No costs were incurred for facilities, for example, in which the Board conducts hearings and hold meetings. The Board has managed to obtain hearing and meeting rooms without cost, from the provincial government, agencies and other Ontario boards and tribunals.

Recording of hearings is undertaken only when required by legislation.

Publications, including this report, have been produced in the least expensive manner available. Board meetings have been limited to five or six times a year, with the Executive Committee dealing with matters that require attention between meetings. Other cost-saving measures have been proposed to the Ministry of Community and Social Services.

F) Outreach to children

The Board obtained the assistance of Youth in Care Connections Across Ontario (an association of young people who had been in residential care), in the preparation of material to be written, in reader-friendly language, aimed at explaining the rights to review and the functions of the Board to children placed in residences throughout Ontario.

The Board, in 1993-1994, continued to consult with the Child and Family Service Advocacy Office and the "Safeguards" project of the Ministry of

Community and Social Services in a review of those safeguards initiatives intended to address the deficiencies reflected in the 1990 Safeguards report.¹

G) Literature review

The Board has initiated a literature review concerning secure treatment so that its members can be current on matters relevant to that subject.

Applications for review

Two hundred and sixty applications for review were received by the Child and Family Services Review Board (CFRSB) between March 1986 and March 31, 1994, 31 regarding denial, revocation of, suspension of, or conditions pertaining to licences; 31 regarding children placed in residence; and 198 children admitted to emergency secure treatment.

The Board was authorized to review emergency secure treatment admissions (ESTA) beginning in 1989 and, from the outset, applications for such reviews have exceeded the number of all other types of applications, 38 in the 1989-90 fiscal year, 42 in 1990-91, 31 in 1991-92, 36 in 1992-93 and 51 in 1993-94. In those same years, the number of applications regarding residential placement (RPAC) and licences, while increasing in number, nevertheless, were minuscule in comparison; they amounted to five and two applications respectively in 1989-90, one each in 1990-91, two and one respectively in 1991-92, four and eight respectively in 1992-93, and five and ten respectively in 1993-94. While the number of applications to the Board dealing with licences continued to increase significantly for the second year in a row, it may be too early to tell whether the increases these past two years represent a pattern.

See the section on observations and concerns for observations regarding the dearth of applications for residential placements.

Table I, Applications for Review, reflects the distribution of applications to the CFRSB by fiscal year and area of responsibility.

Table II, Residential Placement of Children, reflects the resolutions of applications for determination of residential placement submitted to the Board in 1993-94.

Table III, Applications to Review Licensing Matters, reflects the issues in contention and the resolution of the applications concerning licensing matters which were submitted to the Board in 1993-94.

Table IV, Emergency Secure Treatment Reviews - Resolutions, presents the data relevant to applications submitted to the Board regarding emergency secure treatment in 1993-94.

¹ *Review of Safeguards in Children's Residential Programs: A Report to the Ministers of Community and Social Services and Correctional Services* (December 1990).

Table I
Child and Family Services Review Board
Applications for review 1986 - 1994

Fiscal Year¹	RPAC²	Licences	ESTA³	Total
1986-87	2	4	-	6
1987-88	9	2	-	11
1988-89	3	3	-	6
1989-90	5	2	38	45
1990-91	1	1	42	44
1991-92	2	1	31	34
1992-93	4	8	36	48
1993-94	5	10	51	66
Totals	31	31	198	260

¹Fiscal years from April 1st to March 31st.

²RPAC (Residential Placement Advisory Committee).

³ESTA (emergency secure treatment admission).

Table II
Child and Family Services Review Board
Residential placement of children
applications and determinations by the Board 1993-94

Resolutions of Applications	
Resolved by mediation	1
No jurisdiction	2
Placement upheld	1
Hearing pending	1
Total	5

Table III
Child and Family Services Review Board
Applications to review licensing matters 1993-94

		No. of Applications
I. Day nurseries		
a)	Licensee dissatisfied with terms and conditions on licence prescribed by a director	4
	Resolved by mediation (3)	
	No jurisdiction (1)	
b)	Refusal by a director to renew licence	2
	Resolved by mediation (1)	
	Withdrawn (1)	
c)	Refusal by a director to issue a licence	2
	Resolved by mediation (1)	
	Withdrawn (1)	
II. Children's residential services		
a)	Refusal by a director to renew a licence	1
	Director upheld (1)	
III. Placement of children for adoption		
a)	Refusal by a director to renew a licence	1
	Hearing pending (1)	

Table IV
Child and Family Services Review Board
Emergency secure treatment reviews - resolutions 1993 - 1994¹

Fiscal year	Applications for child's release	Applications withdrawn prior to hearing	Hearings held	Releases denied	Release ordered
1993-94	51	17 ² (33.3%)	34 (66.7%)	23 (67.6%)	11 (32.4%)
1992-93	36	20 (55.6%)	16 (44.4%)	11 (69%)	5 (31%)
1991-92	31	17 (55.2%)	14 (44.8%)	13 (92.3%)	1 (7.7%)
1990-91	42	23 (54.8%)	19 (45.2%)	17 (89.5%)	2 (10.5%)
1989-90	38	13 (34.2%)	25 (65.8%)	20 (80%)	5 (20%)
Total	198	91 (46%)	107 (54%)	83 (77.6%)	24 (32.4%)

¹ Fiscal years extend from April 1st of one year to March 31st of the next year.

² In 9 of the 17 cases withdrawn, counsel for the child volunteered that the child wished to withdraw the application for release because the treatment program had advised of the child's imminent release.

Resolutions

The Board received five applications in 1993-94 for a determination of residential placement for children. The Board determined, in two of those cases, that it did not have jurisdiction, in one case the Board upheld the placement of the child, in another case it resolved the matter through mediation and a hearing was pending in the fifth case, at the end of the fiscal year.

Four licensing applications in 1993-94 had to do with the terms and conditions imposed on day nursery licences by a director. The Board determined that it did not have jurisdiction in one of those four cases and resolved the remaining three through mediation.

Two applications regarding licences submitted to the Board, asserted that directors refused to renew licences to operate day nurseries; one of these applications was withdrawn by the applicant and the second was resolved by the Board through mediation.

Directors had refused to issue licences to operate day nurseries in two of the cases submitted for review; one was withdrawn and the second was resolved by the Board through mediation.

One application was submitted to the Board for review, with the assertion that a director had refused to renew a licence to operate a children's residential service; the Board upheld that director's decision.

An application to review a director's refusal to renew a licence to place children for adoption is to be heard in April 1994.

Fifty-one applications were received by the Board in 1993-94 with respect to emergency secure treatment admissions. More than 33 percent of these applications were withdrawn before hearings were held; in 23 cases the Board upheld the admission decisions, and in 11 cases the Board was not satisfied

by the evidence that the child met the criteria for admission, so the Board ordered the release of those children.

While formal information is not available in each case as to why children withdrew their applications, the Board was told by the child's counsel, in 9 of the 17 cases in which applications were withdrawn, that the withdrawals were made because the child was released or was about to be released from the secure treatment facility.

Alternate dispute resolution

The Board has continued to utilize alternate dispute resolution, exploring initially the feasibility of mediation for all cases involving licences and the placement of children (RPAC). Six of the fifteen such applications, submitted to the Board in 1993-94, were resolved through mediation.

In one case, for example, a 16-year-old who applied for a review of his placement, wished to remain in his placement as recommended by the Residential Placement Advisory Committee, which had reviewed his placement. However, the Children's Aid Society (CAS) had rejected the RPAC recommendation and decided to return him immediately to his community.

A Board member assigned to the case mediated a resolution, whereby the CAS consented to allow the young man to remain in his residential placement long enough to complete his school year.

Five day care licensing matters were resolved following the intervention of the Child and Family Services Review Board, resulting in the dropping of terms and conditions that had been imposed by directors on licences in three cases, in a director renewing a licence in another case, and in a director issuing a licence in the fifth case.

Aside from resolving some matters through mediation, the alternate dispute resolution approach has proven useful in identifying more clearly, prior to the inception of a hearing, the issues in dispute, sometimes saving much time and expense by narrowing the focus of the hearing.

Observations and concerns

Matters of special concern were identified by the Board in its annual reports of 1991-92 and 1992-93, and these remain causes of concern. They are identified below along with new concerns. The Board is prepared to provide further details.

A) Most children are not aware of their rights

There is evidence that most children in residential placements, and their parents, as well as residential and agency staff who work with them, are not aware of the right of those children to apply for reviews, nor are they aware of the existence of the Child and Family Services Review Board.

The "Safeguards Report" of December 1990, a report on children's residential programs submitted to the Ministers of Community and Social Services and Correctional Services, notes that children in residential programs are poorly informed about their rights in general. It also states that "... very few processes are in place to inform the parents about the child's rights in care."

Specifically relevant to the Board, the following observations are contained on page 63 of the report:

... the process to access the CFSRB is seen as so cumbersome and complicated that children may become discouraged and not follow through. Moreover, the CFSRB was not known to the children interviewed.

While the report reflects the findings of reviewers that "most residences have a healthy, caring and respectful approach to the young people with whom they work," nevertheless the reviewers recommended, on the basis of their findings, improvement of staff screening, orientation, training and supervision.

The research team concluded that all of the residences which it reviewed had established procedures for informing residents of their rights and, in practice, actually followed their procedures. Most of the children interviewed, however, were unclear about their rights.

Most of the children interviewed acknowledged that they had been advised of their rights but had not paid much attention or did not understand what they were told. Many did not read the written material and some could not read it.

By contrast, the rights of children placed in emergency secure treatment are given greater protection than that afforded children in residential placements.

The law specifically requires emergency secure treatment facilities to advise the child in writing of his or her right to a review by the Board and to notify the Office of the Child and Family Service Advocacy and the Official Guardian of each child's admission. The law further charges the Advocacy Office with the responsibility of ensuring that a disinterested party explains rights of review to a child so admitted. The same law (CFSA) charges the Official Guardian with the responsibility of ensuring that the child in such cases has legal counsel.

In stark contrast to the requirements in law pertaining to emergency secure treatment admissions, no individual or agency is required by law to explain the rights of review or appeal to a child placed in residences until the Residential Placement Advisory Committee reviews the placement. However, many, perhaps most, placements are not reviewed by RPACs. Consequently, it should not be surprising to learn that the 1990 "Safeguards" report concluded that most

children, their parents, and even residential staff were ignorant about the right of children or their parents to apply for a review of placement decisions and that most children and staff interviewed had never heard of the Child and Family Services Review Board.

The Board has been advised by RPACs that they do not review the placement of children in residences with fewer than ten beds and do not review even the placement of children in residences of ten or more beds, even though the law requires them to do so, if the child's guardian is uncooperative. For example, the 1993-94 Annual Report of the Niagara Residential Placement Advisory Committee, by all accounts a responsible group, did not review 64 percent of the placements which it is required to review because they did not have the guardians' consent.

Since the RPAC is the only entity required by law to advise children placed in residence that they have a right to have their placements reviewed by the Child and Family Services Review Board, the massive reduction in the number of children with which RPACs have contact means that most children in residential placements, perhaps the overwhelming majority, are not advised that they have a right to request the review of their placement by the Board.

Efforts by the Ministry of Community and Social Services to ensure that children know that they have a right to a review of their placement and are comfortable in and assisted in accessing those rights do not seem to have been successful or adequate. The Board has been kept informed of the activities of the "Safeguards" Task Force created by the Ministry to respond to the findings of the 1990 "Safeguards" Report and the Board has not seen in those activities any significant effort to ensure that children are aware of their right to a review of their placement.

The Board respectfully urges the Minister to ensure the early introduction of measures to provide for the protection of the rights to review of children

in all residential placements. Steps must be taken to ensure that the rights, afforded them by law, are explained to children by independent, supportive individuals in a manner that encourages children to consider and exercise their rights appropriately.

B) Limited placement options for children

The Board has been advised that, in some cases at least, children do not apply to this Board for release from secure treatment or for a determination as to residential placement, and, in still other cases, we are told, children withdraw their applications for review, solely because they have been advised that there are no facilities or residences available that would meet their needs.

A lawyer who represents children in secure treatment cases, on the basis of her experience, wrote the following to the Board:

I wish to bring to your attention my concern that children who are admitted to a secure facility on an emergency basis may be routinely staying in such a facility because of a lack of alternative resources, and not on the basis of an admission [to the locked facility] grounded in the criteria of the governing legislation.

This kind of situation is of great concern, as secure treatment is such an extraordinary and intrusive measure; children should not remain in such facilities without legal scrutiny and justification simply because they have nowhere better to go to. A child's right to be released from a locked facility is an empty and useless right if that child's community does not provide an alternate, appropriate and acceptable option for her.

A representative of a Residential Placement Advisory Committee in northern Ontario advised the Board that children aware that there are few options for residential placement often opt not to apply for a review because they believe that even if the Board finds that the current residential placement is not appropriate or may be harmful, there would be no suitable alternate placement available which the Board could consider for the child.

One child suffering a nonverbal learning disorder was admitted to a secure treatment facility on two separate occasions and both times was ordered released from the lock-up facility because the Board was not satisfied by the evidence that the child had a mental disorder or had caused serious bodily harm or had made a substantial threat to cause serious bodily harm to self or others.

A neuropsychologist, expert on nonverbal learning disorders, and the Executive Director of the Learning Disability Association of Ontario, both in giving evidence to the Board in this matter, advised that no program in Ontario has staff trained to deal with a child with a nonverbal learning disability and that few professionals in Ontario are trained to properly diagnose this problem.

C) Ecology of the Family

Children who appear before the Board frequently are assessed as requiring counselling, medication and/or treatment to deal with perceived emotional, behavioural and/or mental disorders. In many such cases the evidence before the Board suggests that significant members of the family or the family as a unit may be contributing to the child's difficulties. In such instances, often there is little, if any, indication in the evidence before the Board that the family or its members will be offered, and encouraged to avail themselves of, professional guidance and assistance. Rather, the child whose problems may have resulted

from, or may have been exacerbated by, the family dynamics is singled out as the one to be assessed, medicated and/or treated.

The Board views it as an irony that, in such cases the child might be returned, following a period of helpful intervention, to the very environment that may have contributed to the problems that brought the child to treatment, without any significant effort to identify and deal with the problems in that environment.

On a related note, the Board has heard evidence of cases in which a family that might benefit from supportive intervention is not offered such support because of financial constraints on the agencies that might provide it. One has to wonder about the logic of such economies. A follow-up study of what happens to children following their release from treatment programs might be useful to the Ministry and others interested in the mental health of children.

The Board urges the Minister to review the rationality of the services funded by the Ministry of Community and Social Services to children and families with emotional, relationship and mental disorder problems.

D) Treatment to fit the child

A paramount objective of the *Child and Family Services Act* is to promote the best interests, protection and well-being of children.

The Board has observed, from evidence presented in a number of hearings before it, that children often are expected to fit established services, rather than programs being flexible enough to accommodate the diagnosed needs of children and their families.

In one case, for example, evidence before the Board indicated that the child had experienced seven moves within the eight months prior to the Board's

hearing. He was the recipient of treatment and other related services at, and resided in, four different settings, including three admissions to emergency secure treatment at Youthdale. The child seems to have been sent away to yet another setting each time his behaviour became unacceptable to service providers; this despite the requirement of the *Child and Family Services Act* that children's services be provided in a manner that "respects children's needs for continuity of care and for stable family relationships, . . ." (Section 1[d] [i]).

The Board is concerned that it appears necessary in many cases to shift the placement of a child each time that a change in strategy may be required. A continuum-of-care model should be considered for children.

E) Liberty of the child

The Board is concerned about the liberty of the child who is admitted to a secure treatment program on an emergency basis in Ontario.

The *Child and Family Services Act* contains language and requirements reflecting the significance of protecting the liberty of the child and legislative intent that a speedy process be assured; yet children are frequently in a locked facility for several days before they have a hearing.

Table V illustrates that, during the 1993-94 fiscal year, children who sought a hearing were in the locked facility, on average, over seven days from the day following admission until the day of a hearing. Table VI shows that, on average, children who actually had hearings, waited more than four days after an application for the child's release was submitted, ten waited more than five days for hearings.

Children who actually were released as a result of a hearing by the Board on average were in the lock-up facility for more than three days after submitting an

application before having a hearing. The 11 children whose release was ordered by the Board in 1993-94 were in the lock-up facility, on average, almost seven days, four of these children for eight or more days before they even had a hearing (see Table VII).

The admission of a child to a secure treatment program on an emergency basis in Ontario is determined, in the first instance, by a psychiatrist employed by that profit making facility, hardly a disinterested party.

In other jurisdictions, Washington State for example, admission to a secure treatment program on an emergency basis must be approved by an independent psychiatrist.

The Board is not necessarily recommending the Washington approach, but a study of the experience of other jurisdictions may prove useful to ensure objectivity and to provide greater protection of the liberty of children. Because the liberty of children is important, the Board urges the Minister to initiate a review of the process currently in place in Ontario, to determine how to ensure that the placement of children in a secure setting on an emergency basis is reviewed in a timely fashion by independent, disinterested parties.

Table V
Child and Family Services Review Board
Emergency secure treatment applications 1993-94
time lapse for all applications

	A	B	C
	From admission to secure treatment to application for release	From application for release to hearing date	From admission to secure treatment to hearing date
Days	Number of children	Number of children	Number of children
1	3	1	
2	7	12	
3	5	13	2
4	10	12	1
5	12	8	1
6	3	4 ¹	4
7	3		17
8	3		8
9			3
10	1		4
11			3
12			2
13	1		
14	1		1
15	1		
16			1
18			1
20			1
Total	50²	50²	49³
(Average of 4.68 days)			

¹ While the legislative requirement is that the Board "shall dispose of the matter within five days" [emphasis added], four children had their hearings on the sixth day because the fifth day fell on a Sunday, so the hearings were held on Monday.

² One application was withdrawn before a hearing date was set.

³ In one case the date of the child's admission to secure treatment was not provided. In a second case, the application was withdrawn before a hearing date was set, accounting for a total of 49 rather than 51.

Table VI
Child and Family Services Review Board
Emergency secure treatment applications 1993-94
for applications where hearings were conducted

	A	B	C
	From admission to secure treatment to application for release	From application for release to hearing date	From admission to secure treatment to hearing date
Days	Number of children	Number of children	Number of children
1	3	1	
2	5	5	
3	7	8	2
4	9	10	1
5	6	8	1
6	2	2	6
7			12
8	1		5
9			3
10			2
11			2
12			
13			
14	1		
18			1
Totals	34	34	34
	(Average 3.94 days)	(Average 4.6 days)	(Average 7.6 days)

Table VII
Child and Family Services Review Board
Emergency secure treatment applications 1993-94
For applications where children were released by Board Order

	A	B	C
	From admission to secure treatment to application for release	From application for release to hearing date	From admission to secure treatment to hearing date
Days	Number of children	Number of children	Number of children
1	1		
2	2	3	
3	1	4	1
4	4	2	
5	3	1	1
6		1	3
7			2
8			2
9			1
11			1
Totals	11	11	11
	(Average 3.55 days)	(Average 3.36 days)	(Average 6.9 days)

F) Emergency secure treatment for children

The Board urges the Ministry of Community and Social Services to commission an independent study of emergency secure treatment for children in order to determine its effectiveness and to understand what kind of problems and what kind of children respond to that treatment and under what conditions.

The Board, in reviewing evidence presented to it at hearings into applications for the release of children from emergency secure treatment, must be satisfied by the evidence presented at those hearings that five criteria were met at the time of the child's admission to the secure treatment program; two of those criteria have to do with the effectiveness of the program. A third criterion, to some extent, also relates to the effectiveness of the program. Those three criteria are set out below:

(c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person.

(d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and

(e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

Generally, counsel for the children do not address these criteria as exhaustively as they do the other two criteria and criteria (c) and (d) often receive little, if any, attention from counsel for the children, perhaps because the counsel appointed by the Official Guardian have little expertise in the matter and little, if any, access to such expertise.

The secure treatment program is always represented at hearings by counsel and who, with reference to criteria (c) and (d) particularly, enter

evidence through a senior member of the facility staff who provides typically, a general statement about the professional background of the program's staff, the child-to-staff ratio and the physical constraints of which the facility is capable.

Aside from the potential value to the Ministry of an impact study of a program to which many children are entrusted and which represents a significant investment of funds to the community, the results of such a study could provide information which the facility could use in presenting evidence to this Board in support of its contentions regarding the criteria for admission of children to emergency secure treatment.

G) Licensees unaware of their rights

Several licensees and associations of licensed agencies have indicated to the Board that they were unaware of the right to a review by the Board of terms and conditions placed on licences which they deem unfair. The director of an association advised the Board that she and the members of her association assumed that they had no option but to accept terms and conditions attached to licences by directors.

It is not surprising that licensees would not know of their rights to a review of terms or conditions imposed on licences because a director who imposes terms or conditions on a licence is not required by law to advise the licensee of the right to a review. By contrast, directors are required by law to advise applicants and licensees of their rights to reviews by the Board if they are refused licences, renewal of licences or if licences are revoked.

The Board urges the Minister to ensure that applicants and licensees be advised routinely of their right to reviews by the Board.

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